



Greater Hartford Legal Aid

Testimony of Attorney Sue Garten

In Support of SB 1148

AA Establishing a Civil Action with Respect to Criminal Records Used in Employment Decisions

I am an attorney at Greater Hartford Legal Aid. I am submitting testimony on behalf of Connecticut's Legal Services programs in support of SB 1148. This bill creates a civil action for job applicants and employees who lose job opportunities because employers made hiring decisions based on the applicant or employee's receipt of a provisional pardon or based on criminal history information that should have been erased.

Although Connecticut law says that employers cannot deny employment to a prospective employee solely on the basis of that person's erased arrests or convictions or because they have received a provisional pardon (CGS §31-51i(d)), an applicant's chance of getting a job is often fatally damaged if a consumer reporting agency discloses obsolete and inaccurate criminal history information to an employer. The legislature cannot accomplish its goal of promoting the employment of rehabilitated individuals unless there is an enforcement mechanism for persons who lose job opportunities because they have been granted a provisional pardon or because consumer reporting agencies disclose and employers act on erased records.

Arrests and convictions which have been erased by operation of law or erased because the person was granted a pardon by the Board of Pardons and Paroles should not be available for consideration by employers. All of the other New England states have recognized the harm caused by inaccurate background reports and allow workers to seek redress for violations of consumer reporting statutes. (See OLR Research Report 2009-R-0447.)

In my work at Legal Aid, I represent clients applying for pardons from the Board of Pardons and Paroles. The Board closely scrutinizes each application to make sure that it grants pardons only to people who have stayed out of trouble and made positive contributions to their families and communities for many years. Getting through the application process and receiving a pardon is a major accomplishment. The Board granted only 1,847 pardons in the nine years between 2001 and 2009. When the Board grants a pardon, the person's criminal record is supposed to be erased and no longer subject to disclosure. (CGS §54-142a.)

There presently is no mechanism in state law to enforce the important legislative policy of promoting the employment of rehabilitated individuals. SB 1148 fills that void and I urge its passage.

FACTS about

SB 1148, Establishing a Civil Action with Respect to Criminal Records Used in Employment Decisions

CT passed an expansion of CGS 31-51i, the erasure statute, in 2002 in an effort to protect ex-offenders who are often denied access to employment because of their criminal backgrounds. CT's erasure statute allows records pertaining to youthful offender status, charges that have been dismissed, nolle, not guilty findings or a conviction for which the person received an absolute pardon, to be erased from an individual's criminal record and not be subject to disclosure.

Additionally, in 2006, the legislature added protections that prohibit an employer from discharging or denying employment to a person solely on the basis of a conviction for which the person received a provisional pardon.

Why does the erasure statute need to be amended?

Despite clear indications of the legislature's intent to protect ex-offenders from discrimination based on erased criminal records or the receipt of a provisional pardon, there is currently no remedy available to enforce these provisions.

Unless an enforcement mechanism is added to the law, the legislature's intention to promote the employability of people who have demonstrated their rehabilitation or who's records have been erased will not be realized.

What does the proposed amendment do?

The proposed language mirrors the enforcement language permitting a private right of action for violations of the drug testing statute, 31-51z. It would allow an employee or job applicant to pursue a claim against an employer if the employer refused to hire or fired a person based on past criminal records that have been erased or for which the person received a provisional pardon.

What is a "provisional pardon?"

A provisional pardon can be granted by the Board of Pardons and Parole to enhance an ex-offender's prospects for employment by certifying that an individual has been formally reviewed, that they have demonstrated rehabilitation and are not a threat to public safety or property. A provisional pardon may be limited in nature and may restrict an individual from working in certain jobs related to the criminal convictions in question. The Board may grant a provisional pardon instead of an absolute pardon if an individual submits a pardon application prior to the time frame required to be eligible for an absolute pardon (3 years for a misdemeanor and 5 years for a felony). Provisional pardons do not erase a person's criminal record but give employers one more positive thing to consider when making a hiring decision.